

UTILITY CONSUMER PARTICIPATION BOARD

August 25, 2008

MINUTES

A special meeting of the Utility Consumer Participation Board was held Monday, August 25, 2008 in the Ottawa Building, 4th Floor Training Room, Lansing, Michigan.

I. Call to Order

Chairman Alexander Isaac called the meeting to order at 10:26 a.m. Board members present: Ron Rose, Marc Shulman, Sister Monica Kostielney, Harry Trebing and Alexander Isaac. Members absent: None. Other appearances: Michelle Wilsey, LeAnn Droste, Tim Fischer, Donald Keskey, William Peloquin, David Shaltz, John Liskey, Jim Ault, Jeannine Benedict, Elaine Tycocki, Marilyn Oliver and David Wright.

II. Minutes

Shulman moved, second by Rose and motion carried to approve minutes of August 4, 2008 regular meeting as presented. Rose noted that at the bottom of page 3 in the minutes Liskey was on record raising concerns regarding decoupling and nuclear decommissioning that related to issues to be discussed today.

III. Agenda

Rose moved, second by Trebing and motion carried to approve the agenda as printed.

IV. Public Comment

None.

V. Correspondences

The following correspondences were received and placed on file:

- a. RRC 2009 UCRF Grant Application
- b. MEC 2009 UCRF Grant Application
- c. Ecology Center 2009 UCRF Grant Application
- d. MCAAA 2009 UCRF Grant Application
- e. 2009 UCRF Grant Application Review Memo
- f. 2007 UCRF Annual Report
- g. Major Actions Summary 8_4_08
- h. 2008-09 UCPB Assistant Contract Proposal
- i. Draft UCPB "Expansion of Scope" Request to the Michigan Legislature

VI. Old Business

- a. 2007 Annual Report – Wilsey presented the 2007 UCPB Annual Report with the following technical amendment suggested by David Shaltz: on p.9, Section 2.2 table column 5 header "Amt Awarded (Amt Expended)" change to "Amt Awarded (Amt Expended as of 12/31/07)".

Sister Monica arrived at the meeting at 10:35 a.m.

Rose raised a question (noting it was tied to a new business item on the agenda) regarding section 5 "Update on the legislative review of Act 304". He expressed concern that the Board was created by Statute to administer a particular Act. Since the board does not have a registered lobbyist, should it be making any of the included statements as to the legislative process? For example, if legislation were introduced to disband the Board, would they be writing to the legislature telling them why they should not be removed? It seemed to him to be the responsibility of those who have clients that appear before the board, not the obligation or duty of the board. He did not see anything in Act 304 which authorizes the board to continue to inform the Legislature of the Board's needs with regard to the legislative prerogative.

He cautioned board members to check the required legislation regarding registered lobbyists before speaking with any legislator in this matter. He noted that he preferred to see the section removed. In response, Wilsey noted that the language in the report was carried forward from what she understood was an actual review that was conducted as required by Act 304. The last two lines under status beginning, “the urgency of the issue was heightened in 2007...” was the only addition. Shulman noted that he understood the concerns that Rose raised but that this is a part of a section update on legislative review of the Act. He did not believe this would be considered lobbying or improper. It is just information for the Legislature as to what the status is of Act 304. He did not think it was necessary to strike the whole paragraph. Rose noted that he was trying to get a sense as to how the other board members viewed this – as advancing an agenda or information and reporting facts. He appreciated the alternative interpretation provided by Shulman and noted that the vote on the annual report will indicate what the feeling of the board is on the matter.

Trebing commented that, in his view, the board has a primary responsibility of determining whether the board can continue to fulfill its mission under a narrow interpretation of essentially what was the old fuel clause adjustment intervention. He endorsed what Shulman said. It is the responsibility of the board to relay where it is constrained or restricted. He described the changes in the industry that have narrowed the interpretation and scope of the program.

Shulman moved, second by Kostielney and motion carried to approve the 2007 UCRF Annual Report as amended (Rose dissenting).

VII. New Business

a. 2009 UCRF Grant Application Review

1. 2009 Grant Application of the RRC

Shaltz presented the grant application on behalf of the Residential Ratepayer Consortium. Clients include the Area Agencies on Aging Association of Michigan and the Michigan League for Human Services, both of which have statewide memberships and constituencies. He distributed a handout with key aspects of the proposal. RRC proposes to intervene in the cases of Michigan’s four largest gas companies (CECo, SEMCo, MGU, and MichCon. They are not proposing to participate in any electric cases in this grant application. He presented information on number of customers served by each company, the breakdown of gas costs v. distribution costs paid in a typical residential customer bill, the movement of gas costs over time, and volatility of gas costs in the past year. He summarized the ten cases in which they were seeking funding. Eight of them were the GCR Plan and Reconciliation cases for the four major gas companies. The two other cases include MichCon case U-15628 and the MichCon rate case. He noted the legal and expert rates remain unchanged from the previous year and the hours sought for the Plan and Reconciliation cases are stable. The budget for participation in the 2009 MichCon General Rate Case is set at the same level as the GCR plan and reconciliation cases. Case U-15628 has a smaller budget. Act 304 issues that will be addressed in the 2009 MichCon General Rate Case are the proposed change from a 30-year weather normalization to a ten-year normalization. This proposal has a direct impact on GCR cases, because the supply forecast is the starting point for calculating GCR costs. The second issue is how much of the total storage capacity that MichCon owns is the company going to set aside for GCR customers. MichCon is expected to file the rate case in January 2009.

Case U-15628 was filed by MichCon in July. The case is similar to a case filed two years ago, U-14800. The company is proposing to withdraw native base gas. A portion of it would be sold to third parties and profits retained. RRC filed the motion to consolidate U-14800 with the GCR plan so all of the implications could be thoroughly reviewed. RRC would move to consolidate the cases again. The budget reflects the case being fully litigated. However, if the motion to consolidate was approved, the full budget would not be necessary. The case is important for GCR customers. Withdrawing native gas can have an overall impact on supply deliverability or how much will be available to GCR customers. So, its not just the cost-sharing between the Company and the customers for selling this cheap gas; its also what are the larger impacts on the Company’s ability to provide storage service to its own customers and third parties where GCR customers get some supply credits through the rate process. Results of previous cases

supporting the RRC application were presented. Shulman asked Shultz to clarify that all of the cases in the UCRF grant application fall under the purview of Act 304. Shultz responded that the four GCR Plan and four GCP reconciliation cases are referenced in the Act. In the other cases, they must make a showing that the issues that are addressed have a direct impact on GCR costs. Shulman asked the Attorney General representative to offer an opinion on the two cases. Liskey replied that they had reviewed the proposal and did not see any problems.

Trebing requested that the results from previous cases reported in the grant application be written up in a summary that would be understandable to the common reader. Trebing noted that he is very concerned about the cost to purchase gas as it is 50% or more of the final price. Producers are cutting back on their exploration for new gas, because the natural gas producers say the price of gas on a BTU equivalency basis is one-half the price of oil. They would like to tag the price of gas to the price of oil, which would double the BTU equivalency basis price of gas. At the same time producers are cutting back their new exploration for natural gas – it only increased last year by 1% -- their exploration for oil went up 28%. And, Congress, FERC, Attorneys General are suggesting there is evidence of collusion among producers. The public should be alerted to this problem. Shultz noted that the UCRF application limits what they can do and they also know what this Commission will and won't do. In the context of Act 304 cases, the utilities would just bring motions to strike or dismiss, and they would be out of the case. Trebing noted it was at least important to be aware of it.

Isaac asked Shultz to address the concern regarding the results summary. Shultz agreed to prepare a layman's summary. Kostielney drew the board's attention to the description of the groups represented in the RRC application. The combined groups of 16 local agencies and the Michigan League for Human Services represent hundreds of thousands of customers and command a great deal of respect and stature in the community. This is important to the Board's discussions of representation. Wilsey asked Shultz if his clients had any concerns about issues impacting GCR costs being addressed in other proceedings. Shultz said at this point it has not been a concern. However, if they are not in those cases, they get undercut in the GCR Plan cases.

Rose questioned if there was any potential duplication between grant applications. Shultz responded that if you looked historically at the testimonies that his clients had filed in cases versus the ones that Keskey's clients had filed, they are always on different issues. They use different consultant that have different expertise and backgrounds. With respect to the AG, before any testimony is prepared, they consult with the AG's expert to vet what issues they will address and what approach they will use. They then review their client's priorities, and other factors that may influence the outcome of the proceeding before actually preparing testimony. They are very aware of concerns with duplication and manage the process carefully in order to avoid unproductive duplication. Rose explored the question of conflicting testimony from grantees. Shultz stated that he was not aware that they had ever taken conflicting positions on the same issue as other grantees. Typically, the issues his clients identify for advocacy are different than the issues other grantees' clients select for advocacy. Shultz noted that they try to avoid conflicting position on the same issue with the attorney general as well. Conflict tends to undercut their case. Trebing noted that the collaboration has worked over time. Keskey remarked that a review of the record demonstrates that no duplication on issues has occurred in past cases. The various clients may choose to pursue common issues but testimony and analysis will be distinct. Rose noted that when grantees are addressing the same issue in a grant-funded case, he would like it reported to the board for review. Shultz noted that a section could be added to the grant application of steps to inform the board of potential duplication. Wilsey noted that another approach would be to include notification in the bi-monthly case status monitoring reports of any "common issues" of UCRF grantees/AG. Kostielney commented that the Board should be guided by the broader mission and critical nature of what the board is doing for ratepayers. Wilsey noted that grantees have already committed to non-duplication in the grant application and the Board has identified and vetted areas of potential duplication at this meeting. On-going communication from the grantees and discussion of duplication in the case status reports will mitigate any potential problems.

Motion by Shulman, second by Kostielney and motion carried to approve 2009 RRC grant application with addition of results summary in total amount of \$263,610.

2. 2009 MEC Grant Application - Keskey presented the Michigan Environmental Council grant application. They concentrate mostly on issues that have some connection with rates, environmental issues, and public interest issues. The grant request proposes budgets for various proceedings including new cases, on-going cases, on-going appeals, and potential appeals, including multiple PSCR Plan and Reconciliation cases for DECo and CECco; DECo Rate Case U-15244 and CECco Rate Case U-15245; U-15290 “Balanced Energy Initiative”; U-15611 “Nuclear Legacy Issues”; as well as potential refiling (U-13771); potential appeals (CECco U-14701R and U-15001, U-15245 Rate Case, U-15611); and on-going appeals (COA Appeal CECco U-14701, COA Appeal DECo U-14702, COA Appeal IM Power U-13919, MI SC Appeal DECo U-13808, MI SC Appeal CECco U-13917).

MEC has been particularly involved in addressing issues and remedies relating to the spent nuclear fuel fee that are charged to Michigan ratepayers under Act 304, and the relationship of those fees to the purpose the fees are being charged, which is proper disposal of the spent nuclear fuel. MEC filed a complaint with Board approval in U-13771 and in that case won precedents that it was a proper issue, that the remedies suggested were within the jurisdiction of the Commission, that there was no federal pre-emption, and that MEC had standing to make the issues. The Board previously authorized a grant to pursue issues related to spent nuclear fuel fees relating to the sale of the Palisades plant (now referred to as nuclear legacy issues). In Order U-15245, the Commission has referred those issues to a new docket involving nuclear energy issues, U-15611. The Board again approved a grant for following through on those issues. Nuclear legacy issues are covered by Act 304 because spent nuclear fuel fees have always been collected under Act 304, and spent nuclear fuel fees were collected for a special purpose – proper disposal of SNF. Without proper disposal and decommissioning of the spent nuclear fuel sites, there will be by default a very large liability sitting on the shores of Lake Michigan and Lake Huron and near population centers of eroding nuclear waste at sites never designed for the purpose of being spent nuclear fuel disposal sites. We have all paid these charges as ratepayers under Act 304 and we not have to get the remedies and solution that the fee was designed for – proper decommissioning of the sites. Consumers collected with interest of to \$1451 million for three years special purpose surcharges for the Big Rock nuclear decommissioning fund, and never deposited into the fund. Those funds should be preserved for ratepayers to make sure that the SNF sites are decommissioned with proper disposal of SNF. Without a remedy, the taxpayers and ratepayers of Michigan could get hit again for the SNF disposal.

Trebing asked for commentary on the US Supreme Court case. Keskey replied that they have asked the Court to decide the question of whether ratepayer remedies relative to spent nuclear fuel fees before the State Commission that regulates the retail utility involved is preempted by federal law. Trebing asked if the Court accepted the case. Keskey said they will take a few months to decide whether to take cert, and if they do take it, it will be briefed and probably argued before the end of next June.

MEC also proposes to participate in intervention in the upcoming PSCR plan cases of CECco and DECo, and also the reconciliation cases. Major issues have focused on areas such as pollution control allowances charged under Act 304. Consumers proposed to retain 50% of the profits from the sale of pollution control allowances (funded 100% by ratepayer). Arbitrage trading is not the purpose of the allowances. The proposal also includes advocacy on other ratepayer issues found in review of the actual filings.

MEC’s proposal includes advocacy for integrated resource planning, energy efficiency and conservation (avoiding arguments that are already on appeal). Keskey commented that the Commission specifically ruled that energy efficiency and conservation issues are relevant to Act 304, if you are relating issues to rate design proposals to encourage energy efficiency. Decoupling is clearly a rate design issue that affects Act 304 costs.

Isaac called a five minute recess.

Shulman suggests breaking the grant request down into discreet grants for new cases, on-going cases, and potential cases rather than as one umbrella grant. Keskey expressed concerns with using this approach, particularly related to cases that span multiple years. Droste explained the past problems of grant extensions for cases approved in a subsequent grant cycle. Wilsey noted that this was the first grant cycle in which the applicant, DLEG and the Board agreed that whatever the on-going case budgets were in the previous fiscal year would end with that fiscal year and the request should be constructed for future

work in the cases and presented as a new grant. Timelines, case status and budgets were extensively discussed.

Wilsey suggested the Board take up appeals as a separate grant. An option previously discussed by the board (UCPB Meeting 9/27/07) was to approve base funding for “potential appeals” at a level that would allow initial filing of the appeal. The matter could then be brought before the board for full consideration if it comes to fruition.

Motion by Shulman, second by Kostielney and motion carried to approve a grant for an initial expenditure of \$800 (amended by Shulman to \$875 each) for purposes of filing a claim of appeal in CECU U-14701R/U-15001, U-15245 Rate Case, U-15611 in the total amount of \$2,625.

Shulman requested that the Board take up on-going appeals. Keskey provided a review of the status of on-going appeals funded by the UCRF. Keskey explained the work plan and proposed budget for the appeal of U-13919 (SNF issues) to the US Supreme Court. Rose questioned the relationship between the cases and appeals dealing with SNF issues. Keskey explained the strategy and importance of protecting ratepayer interests in I&M Power, CECU, and DECU cases, preserving appellate rights and avoiding collateral estoppel. Rose asked if any other states are pursuing these issues. Keskey noted that they are not but they would be recruiting Amicus support in their cases. Rose noted that this is the collective voice for ratepayers on this issue with immense costs (\$1.2 billion plus). Wilsey noted that Keskey had entered these cases with on-going approval of the Board, and the Board has consistently told him to move forward. Conclusions on the pending appeals would provide closure on the matters. Shulman asked if the budget would be spent before the decision on the US Supreme Court case. Keskey said he could not predict what the US Supreme Court and Michigan Supreme Court would do. Shulman questioned the necessity of approving expenditures in other cases as opposed to deferring the expenditures pending the US Supreme Court decision. If the US Supreme Court decides that there is preemption, he would hate to see even \$40,000 spent in appeal prematurely. Keskey said he doesn't know what the Courts will do, but he has to be prepared for what they might do.

Shulman asked the Attorney General to address the issue. Liskey noted that the important issue the Board must look at in its deliberation is whether or not these issues fall within Act 304 permissibility. Shulman asked if the appeals in question are under Act 304. Liskey responded that it was debatable. He noted that Commission orders and the Michigan Court of Appeals have rejected these arguments. Keskey noted that those are the cases on appeal. He noted that the statute expressly talks about review and focus on nuclear disposal costs, and the utilities have all charged the fee under Act 304. Shulman asked the other Board members (who have served longer than he) if they had traditionally approved appeals in this area believing that this falls under Act 304 cases? Isaac and Trebing responded affirmatively. Rose asked if there was anyone in attendance representing utilities that could offer an opinion on the matter. No one responded. Rose suggested the Board approve all of the nuclear legacy issues in one grant. Liskey communicated concerns related to addressing SNF issues under Act 304, noting that the Attorney General has opposed these issues being part of Act 304 in all of these cases. Keskey responded to the concerns raised with opposing arguments.

Motion by Rose, second by Isaac (Shulman requested a roll call vote) and motion carried to approve a grant for “nuclear legacy related cases” U-15611 (\$28,684), US SC Appeal U-13919 (\$46,360), MI SC Appeal U-13808 (\$21,544), Refiling Generic Complaint U-13771 (\$13,029), MI SC Appeal U-13917 (\$21,544), and U-15245 (\$21,109) in the total amount of \$152,270. Upon a roll call vote the following voted yes: Kostielney, Rose, Isaac, Trebing. The following voted no: Shulman. The following were absent: None.

Isaac called for a five minute recess.

Isaac called for discussion of energy efficiency related cases in the MEC proposal. Wilsey noted that Shulman had raised the question of whether these issues fell under the purview of Act 304. Wilsey listed the cases that had included energy efficiency as an issue specified in the work plan. Keskey explained that the only cases that have energy efficiency issues are the appeal of U-14701 and U-14702 which are on-going. The Commission already ruled that energy efficiency is under Act 304 insofar as

you have a rate design issue that promotes energy efficiency. The appeals consider whether it's broader than that. IRP and energy efficiency are one of the issues in U-15244, the Detroit Edison rate case. Wilsey noted the application lacked specificity. Keskey argued that many issues are not identified until the filing is reviewed. Wilsey asked Keskey if the Ecology Center proposal would deal with energy efficiency issues. Keskey responded no. She asked Keskey if he had any concerns serving as the lead attorney for two clients, utilizing the same experts, in the same case? Keskey said not because they are complimentary organizations/missions. The Ecology Center is dealing with issues related to renewable energy. Wilsey noted that AARP attempted to intervene on energy efficiency and rate design issues (with some of the same experts) and was unsuccessful. Keskey noted they are appealing the decision. Wilsey noted the exceptions but AARP felt the Commission did not follow-up on their previous decision. Keskey noted the ALJ had to determine if it was a rate design issue or not. AARP's proposal was too general. Liskey noted that there were at least seven cases in which testimony on energy efficiency was stricken since 2001. These matters are on appeal. Wilsey noted that the ALJ had relied on the AG analysis that the cost options are not within the scope of Act 304. Therefore, are these issues viable and are UCRF funds being pitted against one another to the detriment of the ratepayer? AARP expressed the opinion that they were not viable in Act 304 proceedings and that they would seek to pursue these issues in other forums, such as the annual case being proposed by the legislature for renewable energy and energy efficiency. Keskey noted that they specifically did not pursue energy efficiency issues in that case because they already have those issues on appeal. They would like the board to approve funding to finish these appeals and resolve the issue. Keskey noted that they do not repackage the same old approach. While waiting for rulings, they would continue to examine the filings to see if there are opportunities for innovative proposals to promote energy efficiency as a rate design matter in Act 304.

Shulman left the meeting at 3:12 p.m.

Rose asked Keskey and Liskey if Act 304 provides a bright light path with regard to whether or not energy efficiency and conservation is included under the Act or not? Liskey responded that the test is whether or not it is a direct cost (booked cost) of fuel purchased by the utility. Keskey responded that the Michigan Supreme Court said that Act 304 was passed as a remedial reform statute because of the intense concern brought about by the abuses under the other automatic fuel clauses. The Act says that the utility must place into evidence all actions that it has undertaken to minimize costs. It says that only the costs that are reasonable and prudent will be allowed into the PSCR or GCR rates. Liskey stated that they can only do what the statute specifically permits. In the course of the last ten years or so the Michigan Supreme Court has evolved to a more textual approach to interpreting statutes. The AG uses that filter to establish its position on issues. Keskey is correct that the Commission has left open a crack and that requires counsel to be very creative. Rose noted he was hesitant to walk away from an issue that the Board has funded. Trebing asked if this proposal in any way involves decoupling as is referenced in the MCAAA grant proposal. Keskey replied that they do not favor guarantees of earned returns to utilities. Trebing asked if they did not favor decoupling. Keskey said that if decoupling could be designed with some innovation such that there was no guarantee to the utility that would be considered. But to give guarantees on earnings, rate of return, etc. as a price for getting energy efficiency was no deal. Trebing clarified that his experts were considering decoupling. Keskey said that they were considering Consumers proposal and whether there were any alternatives or other ideas. Testimony is not due until September 12. They are not in favor of the Consumers proposal as currently written. Trebing asked Liskey to comment. Liskey said that it is not clear if a decoupling issue falls within Act 304 funding. The Attorney General has opposed decoupling in the Consumers Energy and SEMCO Energy case. Wilsey noted these issues would be discussed further in review of the MCAAA grant application. Trebing stated that in voting on the current motion, he wanted to be sure he was not endorsing decoupling in any form, fashion, or modification. Keskey noted that what's before the board are on-going cases in which decoupling has never been an issue.

Motion by Rose, second by Kostielney and motion carried to approve a grant for COA Appeal 14701 (\$5,454), COA Appeal 14702 (\$2,727), DECo U-15244 Rate Case (\$14,039) in the total amount of \$22,220.

The remaining cases in the MEC work plan were reviewed and discussed. Budgets and totals were checked.

Motion by Trebing, second by Rose and motion carried to approve a grant for U-15002-R (\$8,736.50), U-15417 (\$1,818), 2009 DECo PSCR Plan (\$9,393), 2008 DECo Reconciliation U-15417-R (\$909), U-15001 (\$14,342), U-15415 (\$1818), CEC Co PSCR Plan (\$13,029), U-15415 R (\$909), U-15290 (\$57,570) in the total amount of \$108,524.50.

3. 2009 Ecology Center Grant Application – Keskey introduced David Wright, Ecology Center staff member. The Ecology Center is a nonprofit organization based in Ann Arbor, MI. It has several thousand members and supporters. EC is working with the Energy Commission of Ann Arbor and the City of Ann Arbor to promote the use of renewable energy in Ann Arbor. The proposal is to present testimony in a PSCR case support of the renewable energy portion of the supply mix provided under Act 304 from Detroit Edison Company. They have been trying to negotiate with Edison for the ability to contract for a portion of their energy with renewable energy projects on a long-term fixed basis. Keskey explained that he believed this proposal fits under Act 304 because Act 304 looks at all the sources of your energy – supply requirements, your cost, your contracts, your rate design approaches. Wright noted that there are investor-owned utilities that are operating programs like this. He cited Excel Energy's program. It allows you to hedge fuel costs, as well as reduce emissions because you're replacing the fossil fuel generation with renewables. The program has been very successful in Austin, TX. Rose discussed wind resources in Michigan. Keskey noted that Act 304 not only looks at the mix of energy and the supply needs, but you have to design a rate so that those clear signals reach the ultimate customer. Trebing asked if the City of Ann Arbor would buy on behalf of residential customers, and what utility would they deal with? In the case of Austin, it's different. There you have a municipal utility. Edison does not want you to deal directly with, say, a wind farm. Are you saying that if you had the authority you would go to an independent, non-utility wind farm to buy power? Wright explained that Detroit Edison would offer a utility rate like Excel. Trebing asked, who would represent the residential customers? Wright said the City of Ann Arbor would buy the power. They would also want that rate offered to residences and businesses in Ann Arbor. Trebing asked if the Public Service Commission could mandate that? Keskey said that having the Commission approve a tariff, rate and program that would provide for this option is one of the proposals to be presented in the PSCR case for Detroit Edison. Wilsey asked if they planned to introduce a new tariff/program or modify an existing one. Keskey replied that the Edison Green Currents program is deficient and should be changed to permit this kind of tariff language and rate design. Wilsey asked if they felt the Commission would seriously consider this under Act 304 in light of their rejection of the PAYS proposal and AARP proposal. Keskey replied that they are different approaches. He argued that if you don't make proposals and try to support an effort to introduce something like this, then you will never get it. This is the first Act 304 case in which this proposal would be presented. Wilsey noted that there were others that felt equally strongly that they had innovative proposals, and they were not successful in pursuing them in the Act 304 forum. She asked Keskey if he felt this proposal would fit into the exception referred to by the Commission. Keskey replied yes. This is a renewable program in which willing customers volunteer to pay the cost, because they know they are buying real renewable energy and they are promoting it by making projects possible. Wilsey asked if the way to accomplish this was through a PSCR case. Keskey replied yes. Act 304 expressly talks about looking and forecasting sales, load, and the sources where the utility will get its power, the portfolio of sources of power that you are trying to encourage, and in the long-term you are also directly addressing reducing the fossil fuel expenses that are collected under Act 304. Trebing asked what the buying organization would be? He also asked what the alternative approach would be if the Commission does not force Edison to do this? Wright said they wanted to have a rate/tariff designed that any residential or business customer could sign up for. The utility would then buy it or develop it and use that energy to supply the customers who have signed up for this rate. It has worked well in Austin. It has also worked exceedingly well with Excel Energy which is an investor-owned utility. They have a similar program in Minnesota, as well as Colorado. Trebing asked if Wright could provide data that would indicate what the direct buying of renewables through this form has produced in rates compared to where gas and coal fired generation are right now? Wright replied, yes.

Trebing asked Liskey if this was admissible under Act 304? He noted that Keskey was aware of the very narrow framework in which the Commission may approve it. There is a history of other creative attempts being thrown out. Isaac asked for clarification. Liskey said he could not predict what an ALJ or the Commission would do. Isaac asked if it was an appropriate issue based on law? Liskey said that he had not seen the testimony and could not prejudge if what they craft will be sufficient. All he can relate is that this is an issue that's been struck down several times overall. Keskey said that previous testimony on energy efficiency had been struck down. However, he was not aware of any testimony that has been stricken before the Commission dealing with this kind of motion on renewable energy. Keskey believes Edison will oppose it in part. Rose asked if U-14701 would bring some light to this. Keskey noted the subject is separate (renewable energy as opposed to energy efficiency). The appeal of U-14701 is on the issue that the Commission read Act 304 too narrowly. The exception on rate design is what they are dealing with here, and this is a rate design proposal.

Isaac asked about the response to the grant application question on disclosure of existing or potential conflicts of interest. The response was "we are unaware of any existing conflicts". Why would a "no" answer not be sufficient here? Keskey said that is the answer they put on all of their applications. The conflict for them would be if we were trying to present a proposal that other clients I have would oppose. This proposal is something that's not opposed by any of my clients. Is EC opposed to answering that question – or did Keskey handle all of the questions? Keskey stated that he wrote the answer based on his knowledge after talking to the clients about the proposal. Isaac noted that they may have a conflict as a nonprofit agency. Wright stated there was no conflict that he was aware of. Isaac asked if The Ecology Center solicited Keskey's expertise on the grant or vice versa? Wright responded that The Ecology Center approached Keskey. Isaac asked Wright how he related this proposal to Act 304? Wright stated that it was a rate design case and therefore is appropriate under Act 304. Isaac asked Wilsey what her observation/recommendations were on this matter. Wilsey cited her opinion that the exception that the Commission offered is exceptionally narrow based on recent failed attempts by UCRF grant funded projects. The Ecology Center proposal may be unique. If Keskey gets a positive ruling under the appeals, it may improve their chances. Isaac noted that he was not prepared to vote on this grant proposal until they receive more information. Isaac suggested tabling the matter until the disposition of the appeal of U-14701. Keskey noted that this was not an energy efficiency case. If the Commission puts in its Order that rate design is a proper subject for addressing certain things, it has to apply to something. It is not just a meaningless term. Further, he noted that the Board had often encouraged more grant applications with innovative proposals. Wilsey asked if Keskey felt that the Commission would consider renewables in a different category of consideration than energy efficiency and conservation? Keskey replied that they are significantly different. Wilsey asked if he felt the Commission will view this as an entirely separate matter. Keskey replied that the Commission has not rejected a rate design approach toward encouraging energy efficiency. The only thing the Commission did is put that express exception in U-14701 and U-14702. What it did find is that AARP's testimony does not fit in the rate design exception. Wilsey noted that there was opposition to the PAYS tariff in an Act 304 case as well. Keskey stated that there are differences between this proposal and any others. Wilsey acknowledged that claim but stated it is a long shot in her view. Keskey stated that it was dangerous to try and predict what the Commission will do. He was not aware of any renewable testimony that had been stricken in a case. No one has faced this kind of unique proposal, so why deny this applicant who is trying to tailor a proposal to rate design? Isaac noted that it had not been denied. He agreed that new people and organizations should be encouraged to apply to the grant program.

Rose asked Keskey if there was potential for overlap with the MEC 2009-10 PSCR Plan case. Keskey said that the MEC proposal does not contain the kind of renewable energy rate design issue as the Ecology Center proposal. Rose noted that the same two experts, and the attorney (Keskey) are representing two clients in one case. The renewable energy program has never been presented by the MEC in a case and is not projected to be included in the grants here. Therefore, there is no duplication. Trebing again asked Wright if he could provide for the October 6th meeting, some data on where these contracts have been developed and whether they have actually shown to be more efficient than escalated fossil fuel contracts or something like it? Write responded affirmatively. Trebing asked if they could also check whether there is evidence in Commission's like New York and Wisconsin or California where they have, on the initiative of parties, such as Ann Arbor, introduced this kind of promotional rate for

renewables? Wright noted that he was not aware of Wisconsin having any, but he did know Minnesota and Colorado had the programs. **Motion by Trebing, second by Rose and motion carried to table the MEC grant request to the next meeting scheduled October 6, 2008 pending review of additional data and information to be provided by applicant.** Trebing asked Liskey to consider for the next meeting whether renewables are something that could be entered into this area under Act 304. Liskey agreed.

b. 2008-09 UCPB Assistant Contract Proposal - Isaac called for a change in the order of the agenda to review the administrative support contract proposal. Details of the proposal were reviewed. **Motion by Rose, second by Trebing and motion carried to approve renewal of the Administrative Support Contract with Michelle Wilsey as proposed effective October 1, 2008-September 31, 2009 in the total amount of \$19,975.**

4. 2009 MCAA Grant Proposal – Keskey stated that the MCAA proposal deals with all ongoing cases, and then new GCR for Consumers and MichCon that would be filed in the future, and the cases for excess storage gas. MCAA has been an active participant in these cases on issues including storage issues, the NYMEX issues, the pricing, the LIFO accounting v. other proposals, hurricane risk and emergency risk mitigation proposals, etc. Advocacy on these issues would continue in this grant cycle. The excess gas issue is coming up again. They want to charge the ratepayer high peak prices for gas while selling cheap (storage) gas at a profit to retain in large part for themselves. The budget for MichCon is higher as a result of the storage gas case and the approaching rate case. The budget for Consumers Energy relates to things like hurricane risk and emergency pricing. We have asked for less for Consumers Energy because their rates are less volatile than MichCon's. By learning more about Consumers Energy and advocating for adjustments in those cases, we are better able to benchmark and understand MichCon. Wilsey noted that there the MCAA application did not include the MichCon general rate case that will be filed in January 2009. She asked if it was MCAA intent not to participate? Keskey said he did not expect that to come up until the next grant cycle. Wilsey noted that it was presented in the RRC application.

Rose asked, with regard to cases U-15454, U-15454-R, and U-15041-R, if the focus on “program opportunities permissible under Act 304 such as rate design approaches” may run afoul of Act 304? Keskey responded that depending on circumstances, there may be opportunities in the upcoming GCR plans to promote energy efficiency. This is particularly possible in settlements with MichCon. Rose asked if Keskey would be defining issues more specifically when U-14701 appeal is decided and reporting back to the Board. Keskey responded affirmatively. At that point, these grants may have to change. Keskey said that their emphasis in cases will evolve with the decisions. Isaac noted that he and Trebing wanted additional time to review and discuss case U-15506. Rose said he intended to make a motion excluding that case. Wilsey asked if the motion would include all the cases in the MCAA application except U-15506? Rose said yes. Trebing asked if decoupling was included in any other case in the MCAA application other than U-15506? Keskey said no but he did note that the Board had previously approved funding for participation in that case.

Motion by Rose, second by Trebing and motion carried to approve a grant for CEC 2009 GCR Plan U-15454 (\$1,818), CEC 2009 GCR Reconciliation U-15454-R (\$909), CEC 2008 GCR Reconciliation U-15041-R (\$18,786), CEC 2010 GCR Plan (\$17,473), CEC 2009 GCR Plan U-15451 (\$6,767), MichCon 2009 GCR Reconciliation U-15451-R (\$909), MichCon 2008 GCR Reconciliation U-15042-R (\$25,048), MichCon 2010 GCR Plan (\$39,592), MichCon U-15628 “Excess Storage Gas” (\$28,684) Appeal MichCon U-14401-R (\$1,818) in the total amount of \$141,804.

Keskey asked if they could bring up case U-15506 at the October meeting. Isaac said yes but they should provide information and discuss issues with Trebing ahead of time. Droste noted that if case U-15506 with a proposed case budget of \$15,655 were the only case added at the October 6 meeting, there would be no need to go before the Administrative Board for approval. The funding would be available October 7, 2008.

c. UCRF “Expansion of Scope” request to the Michigan Legislature - Rose felt the entire board should discuss potential communication to the legislature. **Motion by Rose, second by Trebing and motion carried to defer agenda item #VII.c. to the next board meeting.**

Wilsey noted that there was a reference in some of the applications about “potential experts” being included. She reminded applicants that names and credentials of all experts had to be provided to LeAnn Droste.

VIII. Next Meeting

The next board meeting is scheduled Monday, October 6, 2008, 10:00 a.m., Ottawa Building, 4th Floor Training Room.

IX. Adjournment

Motion by Rose, second by Trebing and motion carried to adjourn at 5:20 p.m.

Note: Complete transcripts of this meeting are available upon request.